

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 WILLIAM A. MUNDELL
4 Chairman
5 JIM IRVIN
6 Commissioner
7 MARC SPITZER
8 Commissioner

9 In the matter of:) DOCKET NO. S-03364A-02-0000
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Respondent.)

CARL DELANO WOODARD
AKA: CARL WOODWARD
3065 West Ironwood Circle
Chandler, Arizona 85226,

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST, FOR
RESTITUTION AND ORDER FOR
ADMINISTRATIVE PENALTY**

12 **NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

13 The Securities Division (the “Division”) of the Arizona Corporation Commission
14 (the “Commission”) alleges that the respondent has engaged in acts, practices and transactions that
15 constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*, (the “Securities
16 Act”).

17 **I.**

18 **JURISDICTION**

19 1. The Commission has jurisdiction over these matters pursuant to Article XV of the
20 Arizona Constitution, and the Securities Act.

21 **II.**

22 **RESPONDENT**

23 2. CARL DELANO WOODARD (“WOODARD”) is an Arizona resident, whose
24 last known address is 3065 West Ironwood Circle, Chandler, Arizona 85226. WOODARD is
25 and was at all relevant times, the “managing partner” and “partnership fiduciary” for two
26 partnerships established in Arizona. WOODARD directed, controlled, formulated and

1 participated in the acts and practices of the partnerships. WOODARD offered and sold
2 partnership shares which are securities as defined under the Securities Act, within and from
3 Arizona although not registered as a dealer or salesman pursuant to the provisions of Article 9 of
4 the Securities Act. WOODARD also used the name "WOODWARD" in connection with these
5 partnership shares.

6 III.

7 FACTS

8 3. During the period of at least December 1995, through April 1999, WOODARD sold
9 partnership shares that constitute unregistered securities in the form of investment contracts and/or
10 certificates of participation in a profit-sharing agreement within or from the state of Arizona. The
11 securities were offered through general solicitations verbally by WOODARD. WOODARD was
12 not a registered securities dealer in the state of Arizona. The securities were not registered for sale
13 within or from the state of Arizona, nor offered in reliance upon an available exemption from
14 registration, nor pursuant to a notice filing.

15 4. In approximately September 1992, WOODARD formed a partnership called Maliko
16 Investments ("Maliko I"). Maliko I was described in a September 1992, newsletter as a partnership
17 that spanned "most of the United States." From the onset, WOODARD identified himself as the
18 "custodial, trustee and managing general partner." WOODARD explained that as such, he was
19 responsible for "sending out quarterly reports and maintaining the corporate fund." Additionally he
20 was responsible for producing all correspondence, including a newsletter. WOODARD instructed
21 investors to fill out, initial and sign the two page agreement entitled "Maliko Partnership Contract."

22 5. In November 1994, WOODARD introduced a revised form to the investors entitled
23 the "Maliko Partnership Agreement" ("Agreement"). The Agreement listed WOODARD as the
24 "general managing partner" and the investors as "limited managing partners." The Agreement gave
25 him the right to manage all partnership funds as well as the right to buy and sell "equities, treasury
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1 bills, and certificates of deposits for Maliko”. Investors had to certify the Agreement by printing
2 and signing their names on the last page.

3 6. In December 1995, WOODARD introduced a third, more detailed partnership
4 agreement, again entitled “Maliko Partnership Agreement” (“Third Agreement”). The Third
5 Agreement again listed WOODARD as the “managing partner” as well as a “partnership’s
6 fiduciary” and general managing partner of Maliko I. Investors were referred to as “partners.” The
7 Third Agreement mandated WOODARD’S signature for all account withdrawals or checks.
8 Further, WOODARD was responsible for providing quarterly and or monthly reports and
9 maintaining all partnership accounts. The agreement specified that funds belonging to the partners
10 would be “pooled” for investment purposes. The Third Agreement also required all partners to
11 “devote at least 2 – 3 days per month to the attention and conduct of partnership business.” In
12 reality, WOODARD made all the decisions regarding the investment of the partnership funds and
13 had control over all monies going into and out of the partnership’s accounts. Investors did not
14 participate 2 – 3 days per month in the conduct of partnership business. Investors were instructed to
15 sign the Third Agreement on a signature page, acknowledging that the date of execution was
16 December 15, 1995.

17 7. WOODARD used the newsletters to encourage investors to continue sending him
18 money and not to make withdrawals. The February 1997, newsletter falsely explained that the
19 investor’s profit margin would increase when purchasing new shares or existing shares from another
20 limited partner. Woodard incorrectly stated that not continuing to make regular share purchases or
21 selling existing shares would mean the investor’s “total profit and corresponding dividend will be
22 smaller.” Investors were instructed to call WOODARD directly for further explanation.

23 8. WOODARD misrepresented information to investors regarding funds held by the
24 partnership. The February 1998, newsletter described WOODARD as investing his own money at
25 a “furious pace.” The newsletters listed the amount of money invested by each partner since the
26 previous newsletter. The newsletters provided to investors between February 1, 1995, and February

1, 1998, claim that WOODARD personally invested \$289,605. However, WOODARD actually deposited only \$18,405 into the Maliko account from his personal account during that same time period.

9. Investors learned from the newsletters in 1996, that WOODARD had entered into “joint ventures” with two other investment groups, Bamako and MBM Investments. Maliko I investors were never told that WOODARD had financial ties and a controlling position with Bamako. Further, there was never a vote by the Maliko I partners regarding whether they wanted to take part in a “joint venture” with any other investment groups.

10. In August 1997, WOODARD formed the “Maliko II Partnership Agreement.” The agreement signed by investors joining the Maliko II partnership was similar in both form and content to the MALIKO I, Third Agreement form. Again, WOODARD was identified as the “managing general partner”, custodian, trustee, and “partnership fiduciary.” The agreement specified that funds belonging to the partners would be “pooled” for investment purposes.

11. WOODARD was responsible in Maliko II (as he had been in Maliko I) for sending out quarterly and/or monthly reports, maintaining all partnership accounts and had sole authority to hire or fire employees. The Maliko II Agreement also required all partners to “devote at least 2 – 3 days per month to the attention and conduct of partnership business.” In reality WOODARD made all the decisions regarding the investment of the partnership funds and had control over all monies going into and out of the partnership accounts and investors did not devote 2 - 3 days per month on partnership business.

12. In a newsletter dated April 1, 1998, Maliko Investments was described as a “joint venture” of four separate partnership groups: Maliko I, Maliko II, Bamako and MBM Investments. Just four months later, a newsletter dated August 31, 1998, announced the official formation and incorporation of Capital Investments Management, Inc. (“Capital Investments”). Capital Investments was described as a “joint venture” of the four separate partnership groups which was on steady course to go public in the second half of 1999, at a share price of between \$8 and \$12.

WOODARD had no basis to make this claim. In reality, Capital Investments had been incorporated in Arizona two years before, on November 27, 1996, with WOODARD listed in the Articles of Incorporation as the director, incorporator, statutory agent, president, vice president and treasurer.

13. Maliko I and II investors have invested at least \$814,000. WOODARD was regularly employed by a local company until June 1996. Once WOODARD quit his job, he began transferring money from the Maliko accounts into his personal bank account. At least \$229,000 was transferred from Maliko accounts into WOODARD'S personal bank account from July 1, 1996, through April 7, 2000.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

14. From on or about December 15, 1995, WOODARD offered or sold securities in the form of investment contracts and/or certificates of participation in a profit-sharing agreement, within or from Arizona.

15. The securities referred to above were not registered pursuant to the provisions of Articles 6 or 7 of the Securities Act.

16. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

17. WOODARD offered or sold securities within or from Arizona, while not registered as dealer or salesman pursuant to the provisions of Article 9 of the Securities Act.

18. This conduct violates A.R.S. § 44-1842.

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1 VI.

2 VIOLATION OF A.R.S. § 44-1991

3 (Fraud in Connection with the Offer or Sale of Securities)

4 19. In connection with the offer or sale of securities within or from Arizona,
 5 WOODARD directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made
 6 untrue statements of material fact or omitted to state material facts which were necessary in order to
 7 make the statements made not misleading in light of the circumstances under which they were
 8 made; or (iii) engaged in transactions, practices or courses of business which operated or would
 9 operate as a fraud or deceit upon offerees and investors. WOODARDS' conduct includes, but is not
 10 limited to, the following:

11 a) WOODARD failed to provide offerees and investors with a prospectus or
 12 equivalent offering document containing material information including but not limited to risks,
 13 financial statements, and federal tax aspects.

14 b) WOODARD failed to disclose information on his background as the "managing
 15 partner", including his business background, financial condition, business history and experience in
 16 both setting up and operating a partnership as well as in trading securities.

17 c) WOODARD failed to provide accountings regarding the use of partnership funds.

18 d) WOODARD misrepresented his own personal investments in the partnerships.

19 e) WOODARD failed to disclose that he was diverting funds owned by the
 20 partnership without authorization and used the funds for his personal use.

21 f) WOODARD misrepresented that the partners' "investment vehicle is on steady
 22 course to go public in the second half of 1999 at a share price between \$8 and \$12 per share," when
 23 in fact there was no basis for this representation.

24 20. This conduct violates A.R.S. § 44-1991.

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XII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief against WOODARD:

1. Order RESPONDENT to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. §§ 44-2032;
2. Order RESPONDENT to take affirmative action to correct the conditions resulting from his acts, practices or transactions, including without limitation a requirement to make restitution pursuant to A.R.S. §§ 44-2032;
3. Order RESPONDENT to pay the state of Arizona an administrative penalty of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order any other relief that the Commission deems appropriate and authorized by law.

XIII.

HEARING OPPORTUNITY

RESPONDENT may request a hearing pursuant to A.R.S. §§ 44-1972 and A.A.C. R14-4-306. A request must be in writing and received by the Commission within 10 business days after service of the Notice of Opportunity for Hearing. RESPONDENT or his attorney must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission may, without a hearing, enter an order against RESPONDENT granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, e-mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

Mark Sendrow
Director of Securities